

Remarks

The FTIR peaks at 1711 for Form U at Page 11 in the specification is a typographical error, and should be 1701. Support for the peak at 1701 instead of 1711 is found in Figure 31. Accordingly no new matter has been added.

In response to the communication form the Office mailed July 26, 2005, applicants were required to elect one of the following groups of invention:

- I.      Claims 1-53, drawn to crystalline forms of nateglinide and processes for their preparation; and
- II.     Claims 54-55 drawn to methods of treatment with the crystalline nateglinide of Group I.

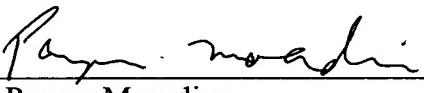
The Applicants provisionally elect, with traverse, to prosecute the subject matter of Group I. The Applicants reserve the right to file divisional applications directed to the non-elected subject matter of the other groups.

This election is made with traverse because it is believed that the claims can be regrouped into a single group. As the Examiner is aware, there are two criteria for a restriction requirement: (A) the inventions must be independent or distinct as claimed; AND (B) there must be a serious burden on the Examiner. "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct invention." MPEP §803.

The Applicants respectfully request that all of the claims in Groups I and II be examined together. All the claims in the suggested group are sufficiently similar to make it possible to examine these claims without serious burden, with minimal search and extensive overlap of art. Once the crystalline nateglinide is found to be patentable, methods of treatment with such crystalline nateglinide would naturally also be patentable since such method of treatment adds an additional feature to an otherwise patentable claim. Further, the art relevant for one class is likely to be highly relevant for the other class as well. The Applicants believe that such regrouping would expedite prosecution of the present case.

If there are any issues outstanding after consideration of this election, the Examiner is invited to contact the undersigned to expedite prosecution of this case.

Dated: January 26, 2006

By:   
Payam Moradian  
(Reg. No. 52,048)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 908-6055 (Telephone-direct)  
(212) 425-5288 (Fax)

CUSTOMER NUMBER 26646